

**OPINION
69-69**

July 28, 1969 (OPINION)

Mr. Ralph Dewing, Director

Director of Accounts and Purchases

RE: Civil Procedure - Garnishments - State as Garnishee

This is in reply to your letter of July 18, 1969, concerning the North Dakota garnishment statutes. You state the following facts and questions:

"Section 32-09-05 of the North Dakota Century Code provides that service upon the State of North Dakota, or any institution, department, or agency thereof, as garnishee, may be made upon the director of the department of accounts and purchases in the manner provided by law for such service in garnishment proceedings.

"The opinion of your office dated July 8, 1969 states that the provisions and procedures under Chapter 32-09 of the North Dakota Century Code, which permit the freezing or seizing of property without first having given the debtor-defendant an opportunity to be heard and have the matter adjudicated, are in violation of due process and are, therefore invalid.

"In view of this opinion, I request your opinion as to under which circumstances if any my office shall accept services of demand prior to garnishment as provided in Sections 32-09-03 and service of garnishee summons as provided in Sections 32-09-08 and 09 of the North Dakota Century Code."

As you note in your letter, this office, in an opinion addressed to Mr. Alfred Schultz, Executive Secretary of the State Bar Association, dated July 8, 1969, concluded that in view of the recent United States Supreme Court decision (*Sniadach v. Family Finance Corporation*, June 9, 1969), the provisions and procedures under Chapter 32-09 of the North Dakota Century Code which permit the freezing or seizing of property without first having given the debtor-defendant an opportunity to be heard and have the matter adjudicated, are in violation of due process and are, therefore, invalid. We further concluded that garnishments in aid of execution, i.e., those garnishments which pertain and relate to garnishment procedures subsequent to the securing of a judgment, were not invalid if the judgment upon which the execution is based was properly obtained.

It would be our opinion, since we have previously concluded the garnishment statutes to be unconstitutional and invalid, except when used in aid of execution of a previously secured judgment, that your office should refuse to honor any garnishment summons and affidavit and demand prior to garnishment, where same is required, unless such summons and affidavit and demand prior to garnishment contain a specific statement on the face thereof that the garnishment action is

in execution of a previous judgment and identifies the judgment by stating the name of the judgment creditor and debtor, the date thereof, the date the judgment was docketed, the name of the Court in which the judgment was rendered, and the page in the judgment book where such judgment was entered.

This conclusion applies to all pending garnishment actions as well as all future garnishment actions.

HELGI JOHANNESON

Attorney General